UNITED ASIAN BANK BHD.

v.

LLOYDS BANK INTERNATIONAL LTD. LLOYDS BANK PLC

HIGH COURT MALAYA, KUALA LUMPUR
SITI NORMA YAAKOB J
[CIVIL SUIT NO. C7018 OF 1985]
7 APRIL 1989

BANKING: *Guarantee - Interest payable under guarantee - Whether interest runs from date of demand or from date of first draw down - Question of interpretation to be given to words and expressions used in guarantee - True intention of parties.*

The only issue raised in this case is whether the interest payable under the guarantee dated 7 February 1983 executed by the defendants in favour of the plaintiff runs from the date of demand, as contended by the defendants or from the date of the first draw down as contended by the plaintiff.

Held:

[1] Since the provisions of the guarantee regarding the liability for interest in this case are somewhat similar to the provisions on interest i(n the charges that were dealt with in *Kong Ming Bank* case, it follows that the plaintiff is entitled to charge interest on the first draw down made to the principal borrower, and not from the date of demand.

[2] Since the defendants have already settled the amount demanded by notice of demand, judgment was entered to the plaintiff for the sum claimed, being the balance due as interest calculated from the date of the first draw down together with further interest at rate of 8% per annum from 17 December 1984 until realisation and costs.

[Judgment for plaintiff on interest due from date of first draw down and costs.]

Cases referred to:

Malayan Banking Bhd. v. Tan Fong Guan & Ors. [1975] 2 MLJ
Kong Ming Bank Berhad v. Leong Ho Yuen [1982] 2 MLJ 111

For the plaintiff - K.L. Rekhraj; M/s. Syarikat K.L. Rekhraj
For the defendants - P. Royan; M/s. Shook Lin & Bok

JUDGMENT

Siti Norma Yaakob J:

The only issue raised in this suit is whether the interest payable under the guarantee dated 7 February 1983 executed by the defendants in favour of the plaintiff runs from the date of demand, as contended by the defendants or from the date of the first draw down as contended by the plaintiff.

As the determination of this issue must depend on the interpretations to be given to the words and expressions used in the guarantee. I now turn to the three provisions in the guarantee that deal specifically with interest to ascertain the true intention of the parties when such interest is payable.

Clause 1 sets out the consideration given by the defendants and it ends with the defendants declaring that “we hereby guarantee on demand in writing being made to us by you, the due payment of the sum of Ringgit Malaysia One Million Only (RM1,000,000) together with

interest thereon". From this clause it is clear that the defendants' liability is limited to the repayment of RM1 million which I refer as the principal amount together with interest thereon.

This is again confirmed by Clause 2 which states that the defendants' liability "shall extend to cover any sum or sums of money which shall from time to time constitute the balance due from the borrower to you up to a maximum of RM1,000,000 with interest thereon".

Clause 4, which is the principal debtor clause, specifies that repayment has to be made within 7 days after the written demand.

Lastly, Clause 7, *inter alia*, restricts the defendants' liability to the repayment of "RM1,000,000 which is the principal plus interest thereon".

The same provisions appeared in 2 charges that were scrutinised by the Privy Council in *Malayan Banking Bhd. v. Tan Fong Guan & Ors.* [1975] 2 MLJ, where it reversed a Federal Court ruling and restored the ruling given by Mohd. Azmi J, as he then was, that from the recital and the operative part of the 2 charges, the limit referred to advances made to the chargor by the bank and did not relate to sums owing for interest and commissions which were not sums advanced at all.

A case which is more in point is *Kong Ming Bank Berhad v. Leong Ho Yuen* [1982] 2 MLJ 111, where the only issue raised in the appeal is whether on the construction of the memoranda of charges, the appellant bank is entitled to charge interest as soon as money in the overdraft facility is drawn as contended by the bank or from the date of the demand, as contended by the chargor respondent and accepted by the trial Judge. The Federal Court held that the additional obligation to pay interest does not cease with the making of the demand but it continues until the payment is completed. This being so, it follows that interest is chargeable before the demand i.e. when money is drawn from the overdraft facility. The Federal Court further remarked, "We cannot see how it can be said that interest should only come to life with the demand."

Since the provisions of the guarantee before me regarding the liability for interest are somewhat similar to the provisions on interest in the charges that were dealt with in *Kong Ming Bank's* case, it follows that the plaintiff is entitled to charge interest on the first drawn down made to the principal borrower, and not from the date of demand.

This is so as being a demand guarantee which operates regardless of whether the principal borrower has committed any act of default, it stands to reason that interest starts to run from the first draw down and not from the date of demand. Moreover, this transaction being a commercial transaction, the only benefit derived by the plaintiff can only be on the profit to be made on the interest due and it is highly inconceivable that they should agree to such interest being due from the date of demand. A more logical conclusion would be that interest should run from the date of the first drawn down.

In this case since the defendants have already settled the amount demanded by the notice of demand dated 10 October 1984 on 17 December 1984, and consequent upon my finding, I had accordingly entered judgment to the plaintiff for the sum claimed, being the balance due as interest calculated from the date of the first draw down together with further interest at the rate of 8% per annum from 17 December 1984 until realisation and costs.

Also found at [1989] 2 CLJ 1281